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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 PAUL ADAMS,  
12 CDCR #F-92755,

13 Plaintiff,

14 vs.  
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16 K. RASKE, et al.  
17

18 Defendants.  
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Civil No. 11cv0243 WQH (JMA)

**ORDER:**

**(1) GRANTING PLAINTIFF'S  
MOTION TO PROCEED IN  
FORMA PAUPERIS, IMPOSING  
NO PARTIAL FILING FEE AND  
GARNISHING \$ 350 BALANCE  
FROM PRISONER'S TRUST  
ACCOUNT PURSUANT  
TO 28 U.S.C. § 1915(a); and**

**(2) DISMISSING CIVIL ACTION  
FOR FAILING TO STATE A CLAIM  
PURSUANT TO 28 U.S.C.  
§§ 1915(e)(2)(B) & 1915A(b)**

22 Plaintiff, a state inmate currently incarcerated at Ironwood State Prison located in Blythe,  
23 California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C.  
24 § 1983. In his Complaint, Plaintiff alleges that he was denied access to the courts when he was  
25 housed at Calipatria State Prison in 2009. Plaintiff has also filed a Motion to Proceed *In Forma*  
26 *Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [ECF No. 2].

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1 **I. MOTION TO PROCEED IFP**

2 All parties instituting any civil action, suit or proceeding in a district court of the United  
 3 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28  
 4 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee  
 5 only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See*  
 6 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, prisoners granted leave to  
 7 proceed IFP remain obligated to pay the entire fee in installments, regardless of whether their  
 8 action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d  
 9 844, 847 (9th Cir. 2002).

10 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act ("PLRA"), a  
 11 prisoner seeking leave to proceed IFP must submit a "certified copy of the trust fund account  
 12 statement (or institutional equivalent) for the prisoner for the six-month period immediately  
 13 preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113,  
 14 1119 (9th Cir. 2005).

15 The Court finds that Plaintiff has no available funds from which to pay filing fees at this  
 16 time. *See* 28 U.S.C. § 1915(b)(4). Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed  
 17 IFP [ECF No. 2] and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However,  
 18 the entire \$350 balance of the filing fees mandated shall be collected and forwarded to the Clerk  
 19 of the Court pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

20 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

21 The PLRA's amendments to 28 U.S.C. § 1915 also obligate the Court to review  
 22 complaints filed by all persons proceeding IFP and by those, like Plaintiff, who are "incarcerated  
 23 or detained in any facility [and] accused of, sentenced for, or adjudicated delinquent for,  
 24 violations of criminal law or the terms or conditions of parole, probation, pretrial release, or  
 25 diversionary program," "as soon as practicable after docketing." *See* 28 U.S.C. §§ 1915(e)(2)(B)  
 26 and 1915A(b). Under these provisions, the Court must sua sponte dismiss any prisoner civil  
 27 action and all other IFP complaints, or any portions thereof, which are frivolous, malicious, fail  
 28 to state a claim, or which seek damages from defendants who are immune. *See* 28 U.S.C.

1 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
 2 (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir. 2000) (§ 1915A).

3 **A. 42 U.S.C. § 1983**

4 To state a claim under § 1983, Plaintiff must allege that: (1) the conduct he complains  
 5 of was committed by a person acting under color of state law; and (2) that conduct violated a  
 6 right secured by the Constitution and laws of the United States. *Humphries v. County of Los*  
 7 *Angeles*, 554 F.3d 1170, 1184 (9th Cir. 2009) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)).

8 **B. Rule 8**

9 As a preliminary matter, the Court finds that Plaintiff's Complaint fails to comply with  
 10 Rule 8. Specifically, Rule 8 provides that in order to state a claim for relief in a pleading it  
 11 must contain "a short and plain statement of the grounds for the court's jurisdiction" and "a short  
 12 and plain statement of the claim showing that the pleader is entitled to relief." FED.R.CIV.P.  
 13 8(a)(1) & (2). Here, Plaintiff's Complaint rambles and, at times, is incoherent. While the  
 14 Complaint need not contained detailed factual allegations "a plaintiff's obligation to provide the  
 15 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a  
 16 formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v.*  
 17 *Twombly*, 550 U.S. 544, 555 (2007) (citations omitted.)

18 **C. Access to Courts Claim**

19 Plaintiff alleges that Defendant Raske denied him access to the courts by failing to  
 20 provide him with sufficient access to the prison's law library. Prisoners do "have a  
 21 constitutional right to petition the government for redress of their grievances, which includes a  
 22 reasonable right of access to the courts." *O'Keefe v. Van Boening*, 82 F.3d 322, 325 (9th Cir.  
 23 1996); accord *Bradley v. Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995). In *Bounds*, 430 U.S. at 817,  
 24 the Supreme Court held that "the fundamental constitutional right of access to the courts requires  
 25 prison authorities to assist inmates in the preparation and filing of meaningful legal papers by  
 26 providing prisoners with adequate law libraries or adequate assistance from persons who are  
 27 trained in the law." *Bounds v. Smith*, 430 U.S. 817, 828 (1977). To establish a violation of the  
 28 right to access to the courts, however, a prisoner must allege facts sufficient to show that: (1)

1 a nonfrivolous legal attack on his conviction, sentence, or conditions of confinement has been  
 2 frustrated or impeded, and (2) he has suffered an actual injury as a result. *Lewis v. Casey*, 518  
 3 U.S. 343, 353-55 (1996). An “actual injury” is defined as “actual prejudice with respect to  
 4 contemplated or existing litigation, such as the inability to meet a filing deadline or to present  
 5 a claim.” *Id.* at 348; *see also Vandelft v. Moses*, 31 F.3d 794, 796 (9th Cir. 1994); *Sands v.*  
 6 *Lewis*, 886 F.2d 1166, 1171 (9th Cir. 1989); *Keenan v. Hall*, 83 F.3d 1083, 1093 (9th Cir. 1996).

7 Here, Plaintiff has failed to adequately describe the non-frivolous nature of the underlying  
 8 cause of action. *See Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (the non-frivolous nature  
 9 of the “underlying cause of action, whether anticipated or lost, is an element that must be  
 10 described in the complaint, just as much as allegations must describe the official acts frustrating  
 11 the litigation.”). Moreover, Plaintiff’s Complaint is far from clear and he has not alleged facts  
 12 sufficient to show that he has been actually injured by any specific defendant’s actions. *Lewis*,  
 13 518 U.S. at 351.

14 In short, Plaintiff has not alleged that “a complaint he prepared was dismissed,” or that  
 15 he was “so stymied” by any individual defendant’s actions that “he was unable to even file a  
 16 complaint,” direct appeal or petition for writ of habeas corpus that was not “frivolous.” *Lewis*,  
 17 518 U.S. at 351; *Christopher*, 536 U.S. at 416 (“like any other element of an access claim[,] ...  
 18 the predicate claim [must] be described well enough to apply the ‘nonfrivolous’ test and to show  
 19 that the ‘arguable’ nature of the underlying claim is more than hope.”). Therefore, Plaintiff’s  
 20 access to courts claims must be dismissed for failing to state a claim upon which section 1983  
 21 relief can be granted. *See Lopez*, 203 F.3d at 1126-27; *Resnick*, 213 F.3d at 446.

### 22 **C. Respondeat Superior**

23 Plaintiff names former Governor Arnold Schwarzenegger, Secretary of the CDCR  
 24 Matthew Cate, Warden Larry Small and Associate Warden T. Ochoa as Defendants in this  
 25 matter but fail to set forth sufficient factual allegations with regard to these Defendants in the  
 26 body of Plaintiff’s Complaint. Thus, it appears that Plaintiff seeks to hold these Defendants  
 27 liable in their supervisory capacity. However, there is no respondeat superior liability under  
 28 42 U.S.C. § 1983. *Palmer v. Sanderson*, 9 F.3d 1433, 1437-38 (9th Cir. 1993). Instead, “[t]he

inquiry into causation must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)). In order to avoid the respondeat superior bar, Plaintiff must allege personal acts by each individual Defendant which have a direct causal connection to the constitutional violation at issue. *See Sanders v. Kennedy*, 794 F.2d 478, 483 (9th Cir. 1986); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

Supervisory prison officials may only be held liable for the allegedly unconstitutional violations of a subordinate if Plaintiff sets forth allegations which show: (1) how or to what extent they personally participated in or directed a subordinate’s actions, and (2) in either acting or failing to act, they were an actual and proximate cause of the deprivation of Plaintiff’s constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). As currently pleaded, however, Plaintiff’s Complaint fails to set forth facts which might be liberally construed to support an individualized constitutional claim against these Defendants.

For these reasons, the Court finds that Plaintiff’s Complaint fails to state a constitutional claim upon which § 1983 relief can be granted, and thus, this action must be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). *See Lopez*, 203 F.3d at 1126-27; *Resnick*, 213 F.3d at 446.

### III. CONCLUSION AND ORDER

Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

1. Plaintiff’s Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) [ECF No. 2] is **GRANTED**.

2. The Secretary of California Department of Corrections and Rehabilitation, or his designee, shall collect from Plaintiff’s prison trust account the \$350 balance of the filing fee owed in this case by collecting monthly payments from the account in an amount equal to twenty percent (20%) of the preceding month’s income and forward payments to the Clerk of the Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).

1 ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER  
2 ASSIGNED TO THIS ACTION.

3 3. The Clerk of the Court is directed to serve a copy of this Order on Matthew Cate,  
4 Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,  
5 Sacramento, California 95814.


6 **IT IS FURTHER ORDERED** that:

7 4. Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.  
8 §§ 1915(e)(2)(b) and 1915A(b). However, Plaintiff is **GRANTED** forty five (45) days leave  
9 from the date this Order is "Filed" in which to file a First Amended Complaint which cures all  
10 the deficiencies of pleading noted above. Plaintiff's Amended Complaint must be complete in  
11 itself without reference to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants  
12 not named and all claims not re-alleged in the Amended Complaint will be deemed to have been  
13 waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)

14 5. The Clerk of Court is directed to mail a form § 1983 complaint to Plaintiff.

15 **IT IS SO ORDERED.**

16 DATED: March 30, 2011

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18 WILLIAM Q. HAYES  
19 United States District Judge  
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